

BRB No. 06-0813 BLA

GLENN ALLEN PENNINGTON)
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 Claimant-Petitioner)
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 v.)
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 EVANS COAL CORPORATION)
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 and)
)
 AMERICAN MINING INSURANCE) DATE ISSUED: 03/22/2007
 COMPANY)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of Joseph E. Kane,
Administrative Law Judge, United States Department of Labor.

Phillip Lewis, Hyden, Kentucky, for claimant.

Paul Jones, Pikeville, Kentucky, for Employer/Carrier.

Helen H. Cox (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: SMITH, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (05-BLA-5348) of Administrative Law Judge Joseph E. Kane with respect to a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). At the hearing, the administrative law judge accepted the parties’ stipulation that claimant had twenty-five years of coal mine employment as supported by the evidence, and considered the claim, filed on August 30, 2001, pursuant to the regulations set forth in 20 C.F.R. Part 718.¹ Decision and Order at 4; Director’s Exhibits 2-8; Hearing Transcript at 12-19. Although he found that claimant established that he is suffering from a totally disabling pulmonary impairment, the administrative law judge determined that the evidence of record was insufficient to establish either the existence of pneumoconiosis or that claimant’s total disability was due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a), 718.204(c)(1). Accordingly, benefits were denied.

On appeal, claimant contends that he established the existence of pneumoconiosis and total disability by x-ray and medical opinion evidence. Employer responds, urging affirmance of the Decision and Order below. The Director, Office of Workers’ Compensation Programs, has indicated he will not file a substantive response unless one is specifically requested.

The Board’s scope of review is defined by statute. The administrative law judge’s Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O’Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359, 363 (1965).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Peabody Coal Co. v. Hill*, 123 F.3d 412, 416, 21 BLR 2-192, 2-197 (6th Cir. 1997); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Gee v.*

¹ The district director issued a Proposed Decision and Order Denying Benefits on May 6, 2003, after finding no pneumoconiosis and no totally disabling respiratory impairment due to pneumoconiosis. Director’s Exhibit 27. On May 9, 2003, claimant requested a formal hearing, and the administrative law judge remanded the case for further development of medical evidence. Director’s Exhibits 28-29, 32-35. The case was returned to the administrative law judge for a formal hearing, which was held on December 15, 2004. Director’s Exhibit 35.

W.G. Moore and Sons, 9 BLR 1-4, 1-5 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986)(*en banc*).

The Board's circumscribed scope of review requires that the party challenging the Decision and Order below address that Decision and Order with specificity, identifying any errors made by the administrative law judge and citing evidence and legal authority which support these allegations. *See* 20 C.F.R. §§802.211(b), 802.301(a); *Cox v. Benefits Review Board*, 791 F. 2d 445, 446-47, 9 BLR 2-46, 2-47-48 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983). If the party does not satisfy these requirements, the Board cannot address the propriety of the findings set forth in the Decision and Order, but rather must affirm them. *Id.*

In this case, claimant has merely recited evidence favorable to his claim and has not identified any errors made by the administrative law judge in finding that claimant failed to establish the existence of pneumoconiosis and total disability due to pneumoconiosis pursuant to Sections 718.202(a) and 718.204(c). Because claimant's counsel has failed to adequately raise or brief any issues regarding the administrative law judge's findings at Sections 718.202(a) and 718.204(c), the Board has no basis upon which to review these findings and must, therefore, affirm them. 20 C.F.R. §§802.211(b), 802.301(a); *see Sarf*, 10 BLR at 1-121. In light of our affirmance of the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis and total disability due to pneumoconiosis, essential elements of entitlement, we must also affirm the denial of benefits. *Hill*, 123 F.3d at 416, 21 BLR at 2-197; *Trent*, 11 BLR at 1-27 ; *Gee*, 9 BLR at 1-5; *Perry*, 9 BLR at 1-2.

Accordingly, the administrative law judge's Decision and Order – Denying Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge